104 (1)

Supreme Court, U.S.
FILED
JUN 7 - 2008
OFFICE OF THE CLERK

No. 08-191

In The

Supreme Court of the United States

ROBERT E. GOODSON

Petitioner(s)

v.

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, NATIONAL ASSOCIATION OF LETTER CARRIERS LOCAL BRANCH 5996; JEFFEREY HARTMAN;
JOHN FECHISIN; RUSSELL SHAMAH; GIL BARELA;
And TIMOTHY MURPHY.

Respondent(s)

On Petition For Writ Of Certiorari
On Appeal from the United States District Court
For the District of Colorado

PETITION FOR WRIT OF CERTIORARI

ROBERT E. GOODSON
Pro- Se client
2883 S. Joplin Ct.
Aurora, Colorado 80013
303-919-3313

QUESTION(S) PRESENTED

1.) Was plaintiff/appellants evidence in both his briefs sufficient for appellate court to call for case to be remanded back for trial and relief from order awarding cost?

2.) Was appellate court sufficient in its standard of review and was it a deliberate abuse of discretion to protect District Judge Kane's erroneous ruling and honor.

3.) Was the appellate court sufficient in its scope of review and was it a deliberate abuse of discretion to protect District Judge Kane's erroneous ruling and honor.

RULE 14.1 (b)

Pursuant to Supreme Court Rule 14.1 (b), Petitioner Robert E. Goodson states that all parties to the proceedings below appear in the caption of the case on the cover page.

TABLE OF CONTENTS

Pages

OPINION BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

STATEMENT OF THE CASE.....4

REASONS FOR GRANTING THE PETITION.....10

1.) Appellate Court not sufficient as in review of Appellant/petitioners evidence.....14

2.) Appellate Court Abused its discretion by Deliberately erroring in its standard of review 19

3.) Appellate Court deliberately erred in its own Protocol in review of appellant/petitioners briefs 20

a.) Abuse of discretion.....20

b.) Failed to broaden its scope of review.....21

CONCLUSION.....24

INDEX TO APPENDICES

APPENDIX A

1.) UNITED STATES COURT OF APPEALS 10TH CIRCUIT.
Affirming district courts granting of summary Judgment to Defendants. Case number 07-1187
.....App 1

APPENDIX B

1.) UNITED STATES DISTRICT COURT DISTRICT OF COLORADO.
Order granting defendants Motion for Summary Judgment in case number 03-cv-1184-JLK-MEH, Entered March 29, 2007.....App 1

TABLE OF AUTHORITIES CITED

CASES **PAGES**

1.) Viernow v. Euripides dev. Corp., 157F. 3d. 785, 792 (10th Cir. 1998).....12

2.) Panis v. Mission Hills Bank, N, A., 60 F. 3d 1486, 1490 (10th Cir.1995).....12

3.) Simms v. Oklahoma ex. rel. dep't Mental Health and Substance Abuse Serv., 165F. 3d. 1321, 1326 (10th Cir. 1999).....13

4.) Morrison v. Commonwealth of Pennsylvania, Dept. of Public Welfare, Office of Mental Health, Schleifer Ambulance Service.....14

5.) J.P. Harika, M. D., 538 Pa. 122; 646 A. 2d. 565; 1994 Pa.....14

6.) Cocker v. S.M. Flickinger Company, Inc. 533 Pa. 441; 625 A. 2d. 1181.....14

STATUES AND RULES

1.) U.S.C. & 1254(1).....1

2.) U.S.C. & 1295(a)(1).....1

3.) 28 U.S.C. & 1331.....1

4.) 28 U.S.C. & 1338(a).....1

5.) U.S. Constitution (Judiciary) Article III section 2 11

6.) C.R.C.P.103(a)(2).....15

7.) C.R.C.P.104(b).....15

8.) C.R.C.P. 402.....15

OPINIONS BELOW

The ORDER AND JUDGMENT of the United States Court of Appeals for The Tenth Circuit of Colorado filed March 13, 2008, Affirming the District Court's grant of summary judgment To defendants in case No. 07-1187 is unpublished. *See* App. A-2. The ORDER of the United States District Court of Colorado filed March 29, 2007, granting defendants motion for summary judgment Civil Action No. 03-cv-01184-JLK is unpublished.

JURISDICTION

The jurisdiction of the District Court was invoked under 28 U.S.C & 1331 and &1338(a). On March 29, 2007 the district court issued its judgment. The jurisdiction of the court of appeals was invoked under 28 U.S.C. & 1295(a)(1). On March 13, 2008 the court of appeals issued its judgment. This court has jurisdiction under 28 U.S.C. & 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.) The judgment must accept as true the evidence presented by appellant as the non-movant and draw all justifiable inferences in his favor. *See Simms v. Oklahoma ex rel. dep't Mental Health & Substance abuse Serv., 165F. 3d 1321, 1326 (10th Cir. 1999).*

2.) Courts must examine the pleadings, depositions and answers to interrogatories, together with affidavits to determine whether there are no genuine issues as to any material fact before summary judgment is appropriate. *See viernow v. Euripides dev. Corp., 157F. 3d 785, 792 (10th Cir 1998) and Panis v. Mission Hills Bank, N. A., 60 F. 3d 1486, 1490 (10th Cir. 1995).*

3.) Courts must decide cases based on Constitution Law. *U.S. Constitution (Judiciary) Article III section 2,* which states, *" The judicial powers shall extend to all cases, in law and* ***equity,*** *arising under this constitution the laws of the United States."*

4.) *Morrison v. Commonwealth of Pennsylvania, Dept. of Public Welfare, Office of Mental health, Schleifer Ambulance Service,* and *J.P. Harika, M.D., 538 Pa. 122; 646 A. 2d 565 1994 Pa.* And *Cocker v. S.M. Flickinger Company, Inc. 533 Pa. 441; 625 A. 2d 1181.*

5.) COLORADO RULES OF CIVIL PROCEEDURE

Rule 103. RULING ON EVIDENCE.
(a.) **Effect of erroneous ruling.** Error may not be predicted upon a ruling which admits or excludes evidence unless the substantial right of the party is affected, and
(2.) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was known to the court by offer or was apparent from the context within which questions were asked.

Rule 104. PRELIMINARY QUESTIONS.
(b.) **Relevancy Condition on Fact.** When the relevancy of evidence depends Upon the fulfillment of a condition of fact, the court shall admit it upon or subject to, the introduction of evidence sufficient to support the findings of the fulfillment of the condition.

Rule 402. RELEVANT EVIDENCE GENERALLY ADMISSABLE
All relevant evidence is admissible, except

as otherwise provided by the Constitution of the state of Colorado, by these rules, or by other rules prescribed by the Supreme Court, or by the statues of the State of Colorado. evidence which is not relevant, is not admissible.

STATEMENT OF THE CASE

The case was originally filed back in 2003. I asserted two claims for relief against my union, the National Association of Letter Carriers ("NALC"), NALC Local Branch ("5996") (collectively, the Local Defendants), based on allegations that defendants discriminated against me because of my race.

Specifically I claim the local defendants violated my rights protected under 42 U.S.C. & 1981 by failing to enforce my collective bargaining agreement with the USPS and I claim NALC and the local defendants violated their duty of fair representation implied under

the National Labor Relations Act ("NLRA"), 29 U.S.C. & 141 *et seq.*

The district court called the ruling a close call and prior to this claimed that my claims would not withstand summary judgment unless I came forward with significant and substantial evidence to support my allegations. Particularly my conclusory assertion that racial animus motivated the actions of the defendants.

The district court also stated that I needed to come forth with evidence that similarly situated non-minority members were treated differently than I. I also needed to show other evidence to support any inferences that I was discriminated against or retaliated against on the basis of my race.

The defendants moved for summary judgment with the argument that plaintiff/appellant failed to present evidence during

discovery that would support his claims. The defendants also claimed that plaintiff/appellant claims against them were time-barred. The district court GRANTED defendants motion on the merits of plaintiff/appellants discrimination and fair representation claims and saw no need to act on the ("NALC's") liability and statue of limitations defenses, the defendants were awarded summary judgment.

Plaintiff/appellant realizing that points made in Judge Kane's summary judgment that he had to overcome, or my claims would not withstand summary judgment were attainable. For the record appellant /petitioner would like to state that another minority by the name of Adrian Perea (Hispanic) who had the same counsel handling his case as the then plaintiff/appellant had and had filed our claims against the NALC within the same month and raised the same issues, had gotten a judgment against the same union.

My reasons for mentioning this is the belief that my counsel conspired with the defendants counsel and other officers of the court to botch my claim to protect the union who had previously lost a summary judgment to Adrian Perea on same issues. In my opinion this was the devil's workshops version of a sacrificial lamb. All my counsel had to do was to duplicate his actions that gave them summary judgment in the Adrian Perea case. Because my case had a timely ("ULP") claim from the ("NLRB") attached to it, made it the stronger of the two cases.

The only difference in Adrian Perea's case compared to plaintiff/appellants case was the judge. Mr. Perea had a conservative judge up against a liberal union were plaintiff/appellant was given a liberal judge going up against a liberal union. So a notice of appeals followed, on 11-05-07 after two extensions of time motions, this pro-

se client successfully and timely filed his opening brief. Then on 12-18-07 and also two extensions of time motions, Colorado's second best law firm representing the appellee's timely filed their response brief in which I believe had to address the real issues in the case the issues that judge Kane addressed in his summary judgment that plaintiff/appellant had to overcome.

Those issues were weather plaintiff/appellants claims untimely, and were defendant/appellees national association of letter carriers, AFL-CIO liable for any acts of the local union under 42 U.S.C. & 1981. Plaintiff/appellant at the time addressed both issues raised by appellee's counsel and then also added a more important issue to his final response brief in which I recused liberal district court judge John L. Kane who adjudicated the case of partiality towards the liberal union in the way of not providing equity in the case. As the old cliché'

states that there is no division in the devils workshop the appellate court in an attempt to also protect the liberal union and now the liberal judge failed in it's fiduciary duties in their review of the now appellant/petitioners appeals briefs.

Particularly my final response brief. Even the clerk of the courts got involved by trying to convince me and I quote, " There really is no need for you to file a response brief, looks like you covered everything in your opening brief." This couldn't be further from the truth being that the defendant/appellee's counsel didn't touch on those important issue Judge Kane informed me in his summary judgment I would have to overcome until their response brief.

These actions by this 10th circuit would be seen as nothing more than malfeasance to an ordinary prudent person. The appellate court in my opinion took the low road and aligned themselves with the lower courts

instead of taking the highroad, which, would have been to be in line with how a superior court would have viewed and reviewed my evidence.

So yes the petitioner respectfully prays that a writ of certiorari issue to review the judgment below as to the sufficiency of the appellant/petitioners briefs.

REASONS FOR GRANTING THE PETITION

Appellant/petitioner believes that appellate court actions were an attempt to protect the honor of one of their own judges by not being sufficient in their review and weighing of appellant/petitioners evidence in his appeals briefs. And that the same appellant court was not sufficient in its review of appellant/petitioners briefs in their appellate review protocol.

Appellant/petitioner believes that the appellate court has departed from the accepted and usual course of judicial proceedings and laws of the land sanctioned such a departure by this lower court to call for an exercise of this court's supervisory powers.

It is of great national importance that we as a nation not have circuit courts and the officers of those circuit courts together plotting and planning the outcome of a case by deliberately erring so as to give one side the upper hand as this 10th circuit court has done in my case.

The officers of those courts, includes attorneys and clerks, who are so in fear of the judges they sacrifice their integrity and conspire to botch the case for one of the clients involved in the case. Usually it's the little David who end up getting their cases botch and thrown out as to protect the big money making goliath

corporations, institutions or associations reputations.

The unfortunate thing about this situation is that the only way these types of conspiracies will be exposed is by someone who is not an officer of that particular court. Someone not apart of that network. Who do I speak of the Pro-se client? And if you didn't know the greatest Pro-se client (Jesus) and look what he exposed. As of now there doesn't seem to be any type of checks and balances to prevent this type of malfeasance So what seem to allow injustice to prevail and waste the taxpayer's money is the errors, the deliberate and calculating errors that some circuit courts and their officers underhandedly plan.

I will show this appellate court, in its attempt to protect one of the judges in their circuit; deliberatly erred with the knowledge that the superior court of the land will not review certain errors. This is done with the hope that the already victim

will be discouraged from going forth with their case. Therefore clearing the perpetrators of crimes so as they can continue only to violate others.

It seems as though their scripted plan has backfired on them. The 10th circuits and the officers of that circuit which includes my counsel at the time, in its attempt to protect the integrity of the big money making goliath ("NALC") has been caught up in their own craftiness and now a district judges honor is at stake for lack of equity and the appellate court who deliberately erred in its review and protocol of appellant/petitioners evidence. Again none of this would have ever come to light if not for pro-se client who has no alliance with 10th circuit. So the victim is being re-victimized and punished for making light of it. This game played by this 10th circuit court can be summed up in one word malfeasance and I pray that the superior court will see it as well.

1.) THE APPELLATE COURT WAS DELIBERATLY NOT SUFFICIENT IN IT'S REVIEW OF APPELLANT/PETITIONERS EVIDENCE.

In the appellant/petitioners final response brief I presented to the appellate court evidence of partiality by liberal district judge Kane towards liberal union this partiality presented itself in the form of lack of equity in the case. I then directed the appellate court to *U.S. Constitution (Judiciary) Article III section 2,* which states, " *the judicial powers shall extend to all cases, in law and* ***equity,*** *arising under this constitution the laws of the United States."* This was not acted upon in my case. Because Judge Kane held me and my counsel to a two- year statue of limitation. Which was two years back from June of 2003 when the case was filed, as far as the presentation of

evidence, we were allowed to present. But allowed the defendants counsel to present evidence as far back as 1996 in the granting of summary judgment to them.

Then to add insult to injury in further violation of equity in the case the judge refused to allow my counsel to present my strongest documentation of discrimination against the union because it was well past the two-year statue of limitation, but allowed the defendants counsel to present that same documentation in segments, in which they removed all inferences and issues of material fact for a trier of facts prior to presenting it in the granting of summary judgment to the defendants.

I then directed the appellate court to those documents in my response brief for review. *See document 69 in support re* and *68 first motion for summary judgment* of court docketing sheet. Due to this

lack of equity the judge considered the case a close call and awarded the defendants summary judgment.

I then directed the appellate court to the law or statue which states that " courts must examine the pleadings, depositions, and answers to interrogatories, together with affidavits to determine whether there is no genuine issue as to any material fact before summary judgment is appropriate. Gave them two case law cases from their own circuit as proof *See Viernow v. Euripides dev. Corp., 157F. 3d 785, 792 (10th Fir. 1998)* and *Panis v. Mission Hills Bank, N.A., 60 F. 3d 1486, 1490 (10th Cir. 1995).*

Its quite obvious to a prudent person that the judge did not review and examine all document as mentioned above prior to the awarding of summary judgment to the defendant or he would have caught there errors perpetrated by

the defendants counsel unless the officers of the court as I stated earlier on in my petition conspired and pre-determined how the case was to be awarded. And the appellate court followed their lead and also took the low road, and abused their discretion to protect judge Kane's honor.

If judge Kane's actions were an oversight then he should be given the opportunity to correct it. Instead the appellate court tried to hide it by not sufficiently reviewing my evidence in hopes to discourage me and I would not pursue the case any l nger.

The appellate court also overlooked or simply disposed of my evidence of a pretext by the defendant/appellee's in my case. I explained how the defendant/appellee's pull off this pretext and was able to back it up with witnesses and the defendant/appellee's own

documentation. The evidence would have shown that my case was not time-barred at the time I bought my charges against defendant/appellee's, but their deliberate delays in the process caused my claim to be time-barred. *See Simms v. Oklahoma ex. rel. dep't Mental health and Substance Abuse. Serv., 165F. 3d. 1321, 1326 (10th Cir. 1999).*

These acts of malfeasance by the appellate court show throughout their review of all the evidence within my two briefs they were to view. Especially my final response brief. Because of the malfeasance this pro-se client didn't feel that it would be in his best interest to ask for a rehearing ("En Banc") that is offered by the judicial system out of fear that they would continue to treat me like ("Jesus") by punishing me with another act of malfeasance by doubling or quadrupling the defendant/appellee's costs against

me. I believe the basis for filing an appeal is that I have to show that the court that handled my case erred, not to punish me for exposing the error.

The NALC discriminated against the wrong minority and now need the assistance of the 10th circuit to help them out of the situation, in which the 10th circuit is doing.
2.) THE APPELLATE COURT ABUSED ITS DISCRETION BY DELIBERATLY ERRORING IN ITS STANDARD OF REVIEW.
The court of appeals abused its discretion by disposing of the evidence in my final response brief. Even though there claims in their order and judgment to have reviewed both plaintiff/appellants briefs upon appeal couldn't be further from the truth, without malfeasance playing a part. This evidence includes my recusal of the district court judge John L. Kane, and evidence of a pretext by

defendant/appellee's. *See Morrison v.*

Commonwealth of Pennsylvania, Dept. of Public Welfare, Office of Mental Health, Schleifer Ambulance Service, and *J.P. Harika, M.D., 538 PA. 122; 646 A.2d. 565; 1994 Pa.* And *Cocker v. S.M. Flickinger Company, Inc. 533 Pa. 441; 625 A. 2d. 1181.*

They applied no scrutiny to the review of my evidence and disposed of the evidence with a bogus citation, knowing that the Supreme Court would not grant a petition for writ of certiorari on errors of factual findings or misapplication of a properly stated rule of law.

3.) THE APPELLATE COURT DELIBERATLY ERRED IN ITS OWN PROTOCOL IN REVIEW OF APPELLANT/PETITIONERS BRIEFS.

A.) The appellate court abused its discretion in

B.) the examination of appellant/petitioners response brief by not broadening their scope of review. They deliberately erred because I recused liberal judge John L. Kane of being partial towards the liberal union (("NALC"). in the form of his lack of equity in the case. Upon this recusal it then became the appellate courts fiduciary duty to then examine the plaintiff/appellants entire record according to their protocol. They did just the opposite by the disposition of that evidence or erroneously overlooking it.

They deliberately cited case law that has no bearing with my case. Yes they deliberately erred with the knowledge that the

Supreme Court would not review my case upon my petitioning to them. *See C.R.C.P. 103(a)(2), 104(b), 402.* Their scope of review in light of plaintiff/appellants charge against trial judge should have caused them to broaden their examination of plaintiff/appellants final response brief. The appellate court clearly abused their discretion, deliberately erred by glancing over the evidence to protect the trial judge.

The appellate courts actions were an act of malfeasance and not in line with how a superior court would have acted on same evidence. "What good is the letter of the law when they are allowed to violate the spirit of the law"? This 10th circuit court harmed me and made a mockery of the judicial system. All they have done is to give credence to the

cliché' " its better to be rich and guilty in America than poor and innocent"? And sadly to say has created another generation of ignoramuses because I'm almost certain that all the defendants and their counsel will inform their offspring on how easy it is to discriminate against certain individuals when you have the correct type of people in high places.

I believe what the 10th circuit court could use is a little color to shock them to the presence of America this is no longer the 1890's good ole boys network who had evidence against white clients by some coincidence it got lost in the shuffle.

CONCLUSION

The petition for writ of certiorari should be Granted.

Respectfully submitted,

Robert E. Goodson

Date: 6/7/08

FILED
United States Court of Appeals
Tenth Circuit
March 13, 2008

Elisabeth A. Shumaker
Clerk of the courts

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

ROBERT E. GOODSON,

Plaintiff- Appellant,

No. 07- 1187

(D. Colorado)

v.

(D.C. no.03-cv-1184-JLK-MEH)

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO; NATIONAL ASSOCIATION OF LETTER CARRIERS LOCAL BRANCH 5996; JEFFERY HARTMAN; JOHN FECHISIN; RUSSELL SHAMAH; GIL BARELA; And TIMOTHY MURPHY,

Defendants- Appellees.

ORDER AND JUDGMENT*

Before **KELLY, ANDERSON,** and **McCONNELL,** circuit Judges.

After examining the briefs and appellate record, this panel has determined
Unanimously that oral argument would not materially assist in the determination

Robert E. Goodson, an African- American letter carrier employed by the United States Postal Service ("USPS"), appeals the grant of summary judgment entered for defendants, National Association of Letter Carriers, AFL-CIO ("NALC"), the NALC- affiliated local union, NALC Branch 5996, and
present or former Branch 5996 union representatives, in this case alleging violations of 42 U.S.C. & 1981 and the duty of fair representation implied by federal labor law.[1] We affirm.

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* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed, R. App. P. 32.1 and 10th Cir. R. 32.1 of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1 (G). The case is therefore ordered submitted without oral argument.

Goodson filed this action in June 2003, alleging that Branch 5996 discriminated against him on the basis of his race in its handling of two grievances filed on his behalf that were ultimately settled favorable to him in July and September 2000. Specifically, he alleges that the defendants had violated his rights protected by 42 U.S.C. & 1981 by failing to enforce his collective bargaining agreement with the USPS and that NALC, Branch 5996, and the defendants representatives violated their duties of fair representation under the national labor relations Act ("NLRB"), 29 U.S.C. && 151-169. The grievances respectively, relate to a directive that Goodson not sit on a stool while "casing" (i.e., sorting) his mail; and a letter that had been placed in his personnel file alleging that he was absent from work without authorization. Nothing adverse resulted from either of the matters in question. Goodson continued to use his stool while casing his mail and was not disciplined for it. After the grievance process was completed, the letter was removed from his personnel file without any adverse consequences in the interim.

Following written discovery, defendants moved for judgment on the pleadings. Applying the "exceedingly liberal standard of review" applicable to Rule 12 motion to dismiss, and calling the case a "close call" on weather to dismiss on rule 12, the district court permitted the case to proceed. Ordered at 2, 4, 12, R. Vol. I, tab 31. Goodson filed an amended complaint, discovery resumed, and defendants filed a motion for summary judgment. The district court granted defendants' motion, concluding that the record as a whole

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[1] While Goodson was represented by counsel before the district court, he proceeds on appeal *pro-se*.

demonstrated that no genuine issues of material fact remained and that defendants were entitled to prevail on the merits as a matter of law.

We have considered the entire record, along with Goodson's briefs on appeal, and conclude that the district court did not err.[2] Accordingly, for substantially the reason set forth in its lengthy and thorough opinion, we AFFIRM the district court's grant of summary judgment to defendants

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[2] In Sprint/United Management Co. v. Mendelsohn, S. Ct. ____, 2008 WL 495370 (2008), the Supreme Court recently decided that "me too" evidence was admissible in certain instances. Although Goodson presented statements f om other employees, it was not the kind of evidence contemplated in Mendelsohn, and that case accordingly does not affect our disposition in this case.

ENTERED FOR THE COURT
Stephen H. Anderson
Circuit Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
Civil Action No. 03cv01184JLK
ROBERT GOODSON,
Plaintiff,
V.
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO;
NATIONAL ASSOCIATION OF LETTER CARRIERS LOCAL BRANCH 5996;
JEFFERY HARTMAN;
JOHN FECHISIN;
RUSSELL SHAMAH;
GIL BARELA; and
TIMOTHY MURPHY,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

KANE, J.

In this longstanding discrimination case, plaintiff ROBERT GOODSON, an African-American United States Postal Service ("USPS") employee, asserts two claims for relief against his union, the National Association of Letter Carriers ("NALC"), NALC Local Branch 5996 ("Local 5996"), and five current and former officers of Local 5996 (Collectively, the "Local Defendants"), base on allegations that defendants discriminated against him because of his race. Specifically, Goodson claims the local Defendants violated his rights protected under 42 U.S.C. & 1981 by failing to enforce his collective bargaining agreement with the USPS and claims NALC and the

local case 1:03-cv- 01184-JLK-MEH Document 80 filed 03/29/2007 Page 1of 16 2 defendants violated their duties of fair representation implied under the National Labor Relations Act ("NLRA"), 29 U.S.C. & 141 et seq. I note at the outset that Plaintiff's claims have been both addressed- and oppugned- in my ruling on Defendants, rule 12(c) Motion for judgment on the pleadings. See Goodson v. National Ass'n of Letter Carriers, 2005 WL 1459729 *1 (D Colo. 2005)(applying"an exceedingly liberal standard of review" Defendants Motion would be denied and Goodson's claims allowed to proceed to discovery).In rejecting the defendants, Motion I observed the following:

This ruling is a close call, however, and Goodson is admonished his claims are unlikely to withstand summary judgment unless he comes forward with significant and substantial evidence to support his allegations, particularly his conclusory assertion that racial animus motivated the actions of defendants Hartman, Fechisin, Shamah, Barela, and Murphy as representatives of Local 5996. Without evidence that similarly situated minorities members were treated differently than he, or without other evidence tending to support an inference that he was discriminated or retaliated against on the basis of his race, judgment will enter against Goodson and in favor of Defendants and subject Goodson to payment of defendants, costs.

Defendants now move for summary judgment, arguing a failure of the evidence adduced during discovery to support Goodson's discrimination claims under the standards previously applied. In the event the evidence supports an inference of discrimination

by the Local Defendants' Defendant NALC disclaims any vicarious liability for such discrimination on grounds that it was unaware and uninvolved in the Local activities with respect to Goodson and asserts, in the alternative, that Goodson's claims against it are time-barred. Because I GRANT Defendants' Motion on the merits Case1:03-cv-01184-JLK-MEH Document 80 Filed 03/29/2007 Page 2 of 16 3 of Goodson's discrimination and fair representation claims, I need not reach NALC's vicarious liability and statue of limitations defenses.

1. Facts and Procedural History.

For purpose of summary judgment, I accept the following facts as true. At all times relevant to the issues raised in this lawsuit, Plaintiff Robert Goodson was employed by the USPS and a member of NALC and Local Branch 5996. Goodson served as a union steward, "off and on," from approximately 2000 to 2004 and handled on his own and others' behalf "dozens" of grievances against various USPS officials. (Goodson Decl. 3) Specifically in February 2000, Goodson investigated an incident involving another African- American employee, Andre Pounds, and a white employee, Robert Maloney, in his capacity of union steward. As a result of his investigation, Goodson concluded that Maloney instigated the altercation the altercation and that pounds should receive a lesser punishment than Maloney. Shortly thereafter Goodson resigned his position of union steward, in part, because he did not approve of the resolution proposed by Local 5996

president, defendant Jeffery Hartman, that placed blame on pounds for the incident.

On January 28, 2000 Goodson received an N-Tol # 1 Letter from the USPS regarding his absence from work in December 1999. An N-Tol #1 Letter is a form of discipline under the Collective Bargaining Agreement ("CBA") between NALC and USPS. Goodson grieved the N-Tol #1 Letter through the Union. Defendant Timothy Murphy represented Goodson at the "Step 1" grievance stage without resolution. Hartman represented Goodson at the "Step 2" grievance stage. Hartman and USPS management met on March 31, 2000, again without resolution. Nearly six months passed before Hartman and USPS officials met again regarding Goodson's grievance. On September 19, 2000, Hartman and USPS resolved the grievance by agreeing that USPS remove the N-Tol #1 Letter from Goodson's personnel file effective September 28, 2000. N-Tol #1 Letters can only adversely affect employees under the CBA mandate "progressive discipline" regime while the letter remains in the personnel file.

On February 4, 2000 Goodson received an "official instruction" from USPS to discontinue using a stool to "case" [1] his assigned mail. Goodson filed a grievance through the Union and again Murphy represented Goodson at the "Step 1" stage without resolution. Hartman represented Goodson at the "Step 2" stage and resolved the grievance on July 20,

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[1] A "case" is what Postal Service employees call a structure with several shelves, each containing multiple slots that a letter carrier must use to organize the mail on his or her route. This operation is called "casing" and can take several hours. (Hartman Decl 8.)

2000. The resolution allowed Goodson to use a stool to case his mail for the lowest of the six casing shelves. Hartman did not confer with Goodson regarding the grievance. Also, Hartman did not insist that USPS management conduct a comparison test to see if the stool negatively effected Goodson's ability to case his mail efficiently. The comparison test is required by the CBA. After resolution of the stool grievance Goodson continued to use a stool to case all six shelves but USPS did not further officially discipline him. However, Goodson was "harassed many times" by USPS management for continuing to use a stool to case all six shelves. (Goodson Decl. 8) On June 22, 2001 a "class" grievance, separate from Goodson's grievance but including and affecting Goodson and white carriers, resulted in USPS agreeing to abide by the CBA and allowing the letter carriers' use of a stool to case all levels of shelving absent specified circumstances. (Defs.' Br. Supp. Mot. Summ. J. Ex. K.)

Goodson was not satisfied with the Local 5996's treatment of him because he felt the N-Tol Letter and stool grievance resolution should have had better outcomes and that Hartman was retaliating against him for the Pounds/Maloney incident. Based on Hartman and 5996's handling of Goodson's grievances, in April 2002, Goodson charged Hartman with misconduct under the NALC constitution. Goodson alleged , inter alia, that Hartman inflamed racial tensions unnecessarily by handling the Pounds/Maloney incident poorly and then retaliated against Goodson because he failed to agree to Hartman's proposed resolution. Goodson claimed that Hartman's retaliation included mishandling and

neglect of grievances filed by Goodson. A Fact Finding Committee found no merit to Goodson's claims and the majority of the members of Local 5996 approved that finding. Goodson then appealed Local 5996's rejection of the charges to NALC. The NALC Board of Appeals rejected Goodson's appeal on February 20, 2003. Goodson commenced this action on June 27, 2003.

II. Merits

A. Summary Judgment Standard.

Rule 56(c) of the federal Rules of Civil Procedure permits entry of summary judgment where the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In reviewing the present motion, I must accept as true the evidence presented by Goodson as the non-movant and draw all justifiable inferences in his favor. *See Simms v. Oklahoma ex rel. dep't Mental Health & Substance Abuse Servs., 165 F. 3d 1321, 1326 (10th Cir. 1999).* Although the movant must show the absence of a genuine issue of material fact, it need not negate the nonmovant's claim. *Id.* Once the movant carries this burden, the nonmovant cannot rest upon its pleadings, but "must bring forward specific facts showing a genuine issue for trial as to those dispositive matters for which it carries the burden of proof." *Id.* "The mere existence of a scintilla of evidence in support of the nonmovant's position is insufficient to create a

dispute of fact that is 'genuine'; an issue of material fact is genuine only if the nonmovant presents facts such that a reasonable jury could find in favor of the nonmovant." *Lawmaster v. Ward,* 125 F. 3d 1341, 1347 (10th Cir. 1997).

Under this standard Goodson's claims fail as a matter of law.

B. Evidence of Racial Discrimination Against Goodson by Local 5996

Under 42 U.S.C. & 1981, Goodson must establish a prima facie case of racial discrimination by showing that "(1) the plaintiff belong to a protective class; (2) that he suffered an adverse employment action; and (3) that the adverse employment action occurred under circumstances given rise to an inference of discrimination." *See Hysten v. Burlington N. &Santa Fe Ry. Co.,* 296 F. 3d 1177, 1181 (10th Cir. 2002); *see also Kendrick v. Penske Transp. Servs., Inc.,* 220 F. 3d 1220, 1227 n. 6 (10th Cir. 2000). As an African American, Goodson is a member of a protected class. Goodson provides evidence that he suffered adverse employment actions in the form of the N-Tol letter and official discussion he received. Goodson also suggest s he suffered "stiffer" disciplinary actions because of poor union representation because both his N-Tol letter and official discussion could possible have been resolved either at an earlier stage of the grievance process, and/or with better results. Assuming, for the sake of argument, that the inefficient or less than ideal resolution of what ultimately were successful

grievances constitutes "adverse" employment actions, Goodson then relies on his own affidait as well as affidavit of Adrian Perea and Alan Pounds to suggest these actions were motivated by racial animus. As tenuous as Goodson's & 1981 theory of racial discrimination is, I will nevertheless assume his evidence is sufficient to make a prima facie case.

Once Goodson establishes a prima facia case of discrimination, the burden switches to Defendants to produce evidence that they acted without discriminatory motives or intent. *See Kendrick, 220* F. 3d at 1229-30. I find, as Goodson predicts in his brief, that the Defendants meet their burden of production by proffering evidence tending to show that Local 5996 handled Goodson's grievances reasonably and in a manner unrelated to his race or any other illegitimate discriminatory factor. (Pl.'s Br. 34.) As Defendants point out, Hartman's resolution of the NTOL#1 Letter was in fact favorable to Goodson (Hartman Decl. 7) and to the entent Hartman made any errors in the resolution of Goodson's stool grievance, those errors did not affect Goodson because Goodson continued to use the stool to case all his mail and the USPS never disciplined Goodson further. (*Id.* at 10; Goodson Dep. 52-53.) The key evidentiary question before me is whether Goodson offers any evidence establishing that the Defendants' non-discriminatory motive, i.e., that they acted "reasonably" and without racial animus, is unworthy of credence and therefore a pretext for discrimination. *See Kendrick,* 220 F. 3d at 1230 (applying *Randle v. City of Aurora,* 69 F. 3d 441 (10th Cir. 1995)); *see also Tex. Dept. of Cmty. Affairs v.*

Burdine, 450 U.S. 248, 255-56 (1981). Goodson's evidence fails because it cannot not create the necessary inference of pretext.

1. Evidence of Pounds' Treatment.

In my order on Defendants' 12(c) Motion for Judgment on the Pleadings, I' specifically admonished Goodson that a casual connection between any discriminatory treatment of Pounds and Goodson's own injuries would be necessary to survive summary judgment. 2005 WL 1459279, *2. Goodson fails to make a casual connection and therefore cannot rely on Pounds' treatment to prove his own injuries. Goodson relies only on the suggestion of racial animus toward Pounds to establish the fact of racial animus towards his – i.e. the suggestion that Pounds, an African- American, was allegedly discriminated against based on race for standing up for Pounds. As an initial matter, the "suggestion" that Pounds suffered race-based discrimination is not evidence of discrimination. Even if Goodson had such evidence, moreover, such evidence would not be sufficient to demonstrate, under a summary judgment standard, a casual connection between Pounds' treatment and his own. *See English v. Colo. Dept. of Corrections,* 248 F. 3d 1002, 1010 (10th Cir. 2001) ("[E]vidence that [the defendant] allowed a culture of racial hostility to flourish... [is insufficient because the plaintiff] must show some nexus between this circumstantial evidence and [the defendant's actions against the plaintiff."). Allegations alone will not get Goodson beyond the evidentiary barrier established by Rule 56(c). Absent

a *factual* nexus between pound's treatment and Goodson's injuries, circumstantial evidence of Hartman's racial animus towards Pounds- even assuming such were established- cannot support a finding of discrimination against Goodson. *See Id.* Based on the evidence in the record to date, no reasonable trier of fact could rely on the Pounds/Maloney incident to infer pretext or racial animus on the part of the local defendants against Goodson.

2. Other Evidence of pretext.

I made clear in my previous ruling that Goodson needed to come forward with "significant and substantial evidence to support his allegations, particularly his conclusory assertion that racial animus motivated the actions of Defendants." 2005 WL 1459729 *2. In response, Goodson offers evidence that other minorities were treated poorly by Local 5996 officials and that whites were treated more favorably than he in relation to the stool grievance. (*See generally* Goodson, Perea, Alan Young Decls.) This evidence, while indicating possible poor treatment of certain individuals, does not create a question of fact as to whether the defendants' assertion that they disciplined or processed and pursued Goodson's grievances in a non-discriminatory manner pretextual. *See English,* 248 F. 3d at 1010 (holding that allegations of racial prejudice were insufficient to carry the plaintiff's "burden of showing pretext" because it did not rebut the defendant's asserted nondiscriminatory motivation). The evidence fails because it does not

cast doubt on defendants' stated non-discriminatory reasons for handling Goodson's grievances as they did. Moreover, like Pound's suggestion that he was treated adversely on the basis of race, Perea and Young's testimony that they were treated adversely, without any connection of their treatment to Goodson's fail to support an inference of pretext in the treatment of Goodson. *See id.* (holding that "some nexus between this circumstantial evidence [of racial bias]" and the adverse employment action is necessary to show pretext).

Goodson relies heavily on Perea's statements that Hartman mishandled his grievances because he was Mexican-American to establish Hartman acted with racial animus in his handling of Goodson's grievances. Unfortunately, Perea's assertions of racial discrimination are as vague and devoid of the necessary discriminatory nexus as Goodson's. Perea, for example, states his belief that Goodson, Alan Young and Pat Chitkoksoong suffered racial discrimination. Goodson and Young are African-American, while Chitkoksoong is Asian. Perea's subjective beliefs notwithstanding, his affidavit is simply devoid of any evidence that African-Americans or Asian-Americans generally were discriminated against on the basis of race. To the extent any of these individuals established he was the subject of race-based discrimination, that fact, without more, cannot support a race-based claim on the part of Goodson. Goodson's own treatment likewise fails to create a question of material fact regarding pretext. It is worth repeating that Goodson *won* his grievance regarding the NTOL letter and

suffered no adverse employment action as a result of his stool grievance.[2] And while Hartman may not have resolved Goodson's grievances as satisfactorily as another union official might have, the assertion is wholly speculative as Goodson presents no evidence that Hartman resolved white employees' grievances with any more gusto. *C.f. Kendrick,* 220 F. 3d at 1230 (explaining that a plaintiff can show pretext "by providing evidence that he was treated differently from similarly-situated employee"). Thus, because both whites and minorities, including Goodson, were positively affected by the "class" stool grievance resolution, Goodson cannot rely on it to show pretext in the handling of his individual grievance. *See Randle v. Aurora,* 69 F. 3d 441, 454 n. 20 (10th Cir. 1995) (noting that an action affecting all employees "does not suggest... that the defendant was motivated by illegal discrimination"). Finally Goodson's own statement s offer alternative, nondiscriminatory reasons for Hartman's actions. Goodson suggested in his internal charges to NALC that Hartman's mishandling of his grievances was an attempt to curry favor with USPS management and advance Hartman within NALC by clearing "Step 3" grievances quickly. (Pl.'s Br. Attach. 6 at 5-6.) Also, Goodson suggested that a conflict of interest, caused by Hartman allowing a USPS manager to remain a union member, resulted in Goodson's poor treatment.

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[2] While the "class" stool grievance had a better resolution than Goodson's individual stool grievance, Goodson enjoyed the benefits of the "class" resolution as did all other similarly situated letter carriers. Goodson, moreover, continued to case his mail in direct contravention of the ruling he received on his grievance with no further disciplinary consequences.

Id. These assertions further undermined Goodson's attempt to demonstrate racial animus as a motivator of Hartman's actions or that Hartman's non-discriminatory motive of reasonableness was a pretext for such animus. Because Goodson has come forward with no evidence from which a reasonable trier of fact could find Hartman's actions, or the actions of the Local Defendants generally, a pretext for invidious race-based discrimination, Goodson's & 1981 claim failed as a matter of law under summary judgment standards.

C. Vicarious Liability of Defendant NALC.

Though not necessary for the disposition of this case, I briefly discuss Goodson's vicarious liability theory.[3] In my June 25, 2005 Rule 12(c) Order, I stated that Goodson must "come [] forward with

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[3] Also I have not reached the period of limitations issue raised by the Defendants because their resolution is not necessary for the disposition of this case. However, I do note that Goodson's claims are likely time-barred. Goodson would need to show that his charges to NALC constituted an internal remedy that would toll the periods of limitations for his claim. *See Frandsen v. Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees,* 782 f. 2d 674, 681 (7th Cir. 1986) (discussing whether internal remedies should toll the period of limitations for a duty of fair representation claim). This is an open question in this case. However, Goodson is significantly burden by the fact that he did not file his internal, non-mandatory charges against Hartson until after the six month and two year period of limitations expired for the DFR and 1981 claims respectively. *DelCostello v. International Brotherhood of Teamsters,* 462 U.S. 151, 169-70 (1983) (holding that a six-month period of limitations is applicable to a duty of fair representation claim); *see Cross v. Home Depot,* 390 F.3d 1283, 1288-89 (10th Cir.

specific, additional facts" to establish a viable vicarious liability claim against NALC. 2005 WL 1459729 *2. In response, Goodson invokes Perea's testimony that NALC's National Business Agent, Gil Berela, knew of racial discrimination against Perea, Goodson and two other and failed to act. (Perea Aff. 18.) Perea does not state that berel or anyone else from NALC had any involvement with or responsibility for the specific grievance or discriminatory actions alleged by Goodson.

NALC can only be vicariously liable for Local 5996's actions if an agency relationship exist "with respect to the particular discriminatory practices" *and* "whether, under section 1981, an agency relationship... is sufficient to impute from the local to the international the requisite discriminatory intent."Berger *v. Iron Workers Reinforced Rodmen Local 201*, 843 F. 2d 1395, 1430 (D.C. Cir. 1998) *clarified on reh'g*, 852 F. 2d 619 (D.C. Cir1998). In the union context, "an agency relationship cannot simply be presumed rather than proved." *Id.* at 1431. NALC must have actual control over the discriminatory practices of Local 5996 to create an agency relationship in a &1981 case. *See id.* Most courts that find agency relationships in union discrimination contexts do so because the international participated in or approved of contract provisions or official union policies that were *themselves* discriminatory. *See, e.g., Berger*, 843 F .2d at 1426-27; *Patterson v. Am Tobacco Co.*, 535 F .2d

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2004) (explaining that Colorado's residual two-year period of limitations would apply to a & 1981 claim actionable before the 1991 amendment to & 1981.

257, 270 (4th Cir. 1976); *Sagers v. Yellow Freight Sys., Inc.*, 529 F 2d 721, 737 (5th Cir. 1976). By contrast, [4] Goodson does not allege that any provisions of the CBA or official policies of the union are themselves discriminatory. Thus NALC's participation in negotiating the CBA cannot serve as basis for an agency relationship "with respect to the particular discriminatory practices." *Berger*,843 F .2d at 1430.

NALC can also be liable for racial discrimination by Local 5996 if NALC 'authorized, ratified, or approves a local's [intentional discrimination]." *Berger*, 843 f .2d at 1430. Assuming for the purpose of summary judgment that NALC Gil Barela knew of Local 5996's discrimination against Goodson, NALC must then authorize, ratify, or approve the discrimination to possess the necessary intent to discriminate under & 1981. *See id.* There is no evidence, through Perea or otherwise, of any such ratification or approval.

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[4] *But see Robinson v. Laborers' International Union of North America AFL-CIO*, 1989 WL 162783 *2-3 (N.D. Ohio 1989) (holding an international union could be vicariously liable for a local discrimination because it negotiated the referral provision that the local allegedly discriminated against the employee with and because the AFL-CIO regularly notified the international of discrimination charges filed against the local). *Robinson* is distinguishable on its facts and constitutes a high water mark for imputing liability on a national for the act of its local in handling individual grievances. I decline to adopt the *Robinson* court's reasoning that an agency relationship can be based on an international's participation in negotiating a CBA when a plaintiff does not allege that any provisions in the CBA is discriminatory.

D. Duty of Fair Representation.

Section 8(b) of the National Labor Relations Act imposes a duty of fair representation (DFR) on unions, precluding them, among other things, from restraining or coercing employees in the exercise or their other rights under the Act as well as from causing or attempting to cause an employer to discriminate against an employee. 29 U.S.C. & 158(b)(1) & (2); *see Considine v. Newspaper Agency Corp.*, 43 F .3d 1349, 1357 (10th Cir. 1994) (explaining the development of the duty). As articulated by the United States Supreme Court in *Vaca v. Sipes*, a union breaches its duty of fair representation if its actions are either "arbitary, discriminatory, or in bad faith."386 U.S. 171, 190 (1967). A union's discriminatory conduct violates its duty of fair representation if it is "invidious." *Considine*, 43 F .3d at 1359. Discrimination is invidious if based upon impermissible or immutable classifications such as race or other constitutionally protected categories, or arises from prejudice or animus. *Considine*, 43 F .3d at 1359-60 (citing *Steele v. Louisville & Nashville R.R. Co.*, 323 U.S. 192, 203 (1944)). As fully set forth above, Goodson does not put forth evidence sufficient for a reasonable trier of fact to conclude that racial animus or prejudice motivated either the Local or National Defendants' actions. Accordingly, summary judgment for the Defendants on the DFR claim is appropriate.

IV. Conclusion.

Based on the foregoing I GRANT Defendants' Motion for Summary Judgment and ORDER that judgment enter for Defendants, and against Mr. Goodson, on each of his claims. Goodson does not present sufficient evidence for a reasonable trier of fact to conclude that Defendants acted in contravention of the protections afforded Goodson under 42 U.S.C. & 1981 or of their duty of fair representation. Accordingly, the Defendants are entitled to judgment as a matter of law.

Dated March 29, 2007.

S/John L. Kane
SENIOR U. S. DISTRICT JUDGE